

STATE OF MICHIGAN
COURT OF APPEALS

EILEEN MARSHALL,

Plaintiff-Appellee,

v

CITY OF BAY CITY,

Defendant-Appellant.

UNPUBLISHED

April 19, 2007

No. 272139

Bay Circuit Court

LC No. 05-003191-NO

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

In this case involving the highway exception to governmental immunity, defendant appeals as of right from the trial court's order denying its motion for summary disposition under MCR 2.116(C)(7). We reverse and remand.

Plaintiff lives at 1316 Broadway in Bay City. On May 5, 2004, Broadway (also known as M-13) was closed for construction. Plaintiff's friend dropped her off after an evening excursion, but could not do so directly in front of her house because two "Road Closed" signs blocked access to Broadway Street. Plaintiff got out of the car at a neighbor's driveway and, while walking along the sidewalk toward her home, plaintiff fell and injured her knee. Plaintiff then sued defendant for failing to maintain the sidewalk in reasonable repair. Defendant moved for summary disposition under MCR 2.116(C)(7) on the basis of governmental immunity. The trial court concluded that, although Broadway was closed, the highway exception to governmental immunity still applied to the sidewalk. Therefore, it denied the motion. Defendant then appealed as of right. See MCR 7.203(A)(1) and MCR 7.202(6)(a)(v).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). Summary disposition under MCR 2.116(C)(7) is appropriate when a claim is barred by immunity granted by law. *State Farm Fire & Casualty Co v Corby Energy Services, Inc*, 271 Mich App 480, 482; 722 NW2d 906 (2006).

The highway exception to governmental immunity, MCL 691.1402(1), provides in relevant part:

[E]ach governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for

public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. . . . The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel.

Further, MCL 691.1401(e) defines “Highway” to mean “a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles.” The word “sidewalk” is not defined in the statute. However, in *Stabley v Huron-Clinton Metropolitan Park Authority*, 228 Mich App 363, 367; 579 NW2d 374 (1998), quoting Black’s Law Dictionary (6th ed.), the court noted that a sidewalk is commonly understood to be that “‘part of the public street or highway designed for the use of pedestrians.’” Given the common understanding of the term sidewalk, the *Stabley* Court concluded that, in order to constitute a sidewalk within the meaning of MCL 691.1401(e), the sidewalk must be adjacent to a public roadway. *Id.* at 369.

The duty to maintain a public highway can be suspended while the highway is being improved or repaired by closing it to public traffic. *Beattie v Detroit*, 137 Mich 319, 323; 100 NW 574 (1904) Erecting barricades and marking a road as closed to through traffic sufficiently closes a road to suspend liability under the highway exception. *Pusakulich v City of Ironwood*, 247 Mich App 80, 85-86; 635 NW2d 323 (2001); *Grounds v Washtenaw County Rd Comm*, 204 Mich App 453, 456; 516 NW2d 87 (1994).

The *Pusakulich* Court recognized that a temporary closure removes a street from the highway exception, and that *Stabley* and *Grounds*, *supra*, necessarily also require the conclusion that any sidewalk connected with the temporarily closed highway is also removed from the highway exception. *Pusakulich*, *supra* at 87. There is no question that Broadway had been officially closed and that barricades were erected warning motorists of the road closure. Hence, the highway exception did not apply to the closed portion of Broadway and its connected sidewalk. Therefore, the trial court should have granted defendant’s motion for summary disposition. Plaintiff’s argument that the street was open to “local” traffic does not change the fact that the street was officially closed and that appropriate signage was in place informing the public of this fact. As defendant notes, there is no requirement that a road be torn up to the point of impassability before it can be officially considered “closed.”

Reversed and remanded for entry of an order granting summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Michael R. Smolenski

I concur in result only.

/s/ Joel P. Hoekstra